

# CUSTOMARY LAW AND REGULATION: AUTHENTICITY AND INFLUENCE

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## Abstract

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In its origins, customary law is a product of tribal order, which lacked a genuine state organization and institutions to create and enforce the law (Pëllumbi, 2006). Albanian customary law (ACL) is one of the oldest and most exceptional bodies of European customary law. It is exceptional that it does not come from a legislator or state parliament, but it was transmitted across generations in its unwritten form since antiquity. ACL has been applied in Albanian territories alongside various state laws implemented by locals or invaders. The purpose of this paper is to bring closer the scientific knowledge regarding the application of customary law from the ancient period to the new time. This knowledge brings scientific data regarding the originality or the influence of the customary rights of foreign people on ACL. This paper, by using the comparative methods, theoretical and meta-analysis methods (Maloku, 2020), will present the views of some foreign and local authors on customary law throughout history, and in particular in the Kanun of Lekë Dukagjini (KLD) as a fundamental source of ACL. The KLD has had the greatest longevity. Japanese anthropologist Kazuhiko Yamamoto considered the KLD to be similar to ancient Japanese customary law and Homeric-era law (Yamamoto, 2015). This paper contributes to the existing scientific literature, especially in the legal field. Moreover, this paper can contribute to the work of criminologists, victimologists, sociologists, and historians of the rule of law who deal with the research on the impact of customary law in Albanian lands.

**Keywords:** Customary Law, Regulation, the Origin of Customary Law, Albanian Customary Law, Kanun of Lekë Dukagjini, Contemporary Law

**Authors' individual contribution:** Conceptualization — I.Q. and A.M.; Methodology — E.M.; Formal Analysis — I.Q. and A.M.; Investigation — I.Q.; Resources — I.Q., A.M., and E.M.; Writing — Original Draft — I.Q.; Writing — Review & Editing — I.Q. and A.M.; Supervision — I.Q. and A.M.

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## 1. INTRODUCTION

This research paper on the historical timeline of the Kanun of Lekë Dukagjini (KLD) as a fundamental source of Albanian customary law (ACL) initially discusses the history of customary law among different people of the world. It has been argued that in primitive communities based on morality

customary law has its origins (Elezi, 1983, p. 12). For it is rightly said that the law before it becomes law is a custom (Gjeçovi, 2001). In the law of ancient, slave-owning societies, customs obtained attributes of laws that were enforced by state authorities, and that is why it is said that the sanctioning of customs created customary law. Many people considered customary law to be the soul of subsequent codified

law. While numerous people and countries accumulated customary law within their constitutional acts and other legal codes (England, France), the Albanian people as direct descendants of the ancient Illyrian population (Hasluck, 1954, p. 10), did not codify their customary laws, they remained unwritten in their minds. This unwritten customary right was applied by the indigenous Albanian people to foreign parallels, to have lost the foreigner as a result of foreign occupations. Customary Law was applied concurrently with the laws of invaders ever since the fall of Illyria under the Roman Empire in 168 B.C., and later during feudalism under Byzantine occupation, followed by Serbian, Bulgarian, Ottoman, and Yugoslav rule, with occasional application in modern times. This research paper presents scientific data on the application of Kanuns as sources of ACL during foreign conquests of Albanian territories. In addition, regarding ACL, the idea has been reinforced that its origin is considered to be in the Illyrian-Pellagian time, in the time of the pagan faith. It is worth mentioning the Serbian author Nedeljković in the book "Kanun of Lek Dukagjini" where he compared the Serbian and Albanian customary law and proved that the Albanian people and their ACL are older than the medieval Serbian one (Nedeljković, 1956, p. 434)

Until now, in a historical period, there were no sources regarding the application of ACL in the Albanian territories, especially in the early medieval period when the Bulgarian Empire ruled in the Albanian territories. Therefore, this paper brings for the first time data related to the application of ACL during this period. This work also analyzes the direct comparative data between ACL, respectively the KLD and the Code of Tsar Dushan I extracted from the King of Serbia in 1349.

The finding of this study is limited by the study's exploratory and quantitative nature (Njapha & Lekhanya, 2017). The paper itself has a gap because it has not followed the methodology of interviewing experts who have made a great contribution to customary law and no research has been done on the impact of customary law on positive law.

The objective of this study is to investigate further (Singh, 2021) the authenticity of ACL and its application throughout history, and also the influence of the foreign customary laws in this regard.

The purpose of this paper is to bring closer the scientific knowledge regarding the application of customary law from the ancient period to the new time. This knowledge brings scientific data regarding the originality or the influence of the customary rights of foreign people on ACL.

This paper summarizes the results of archival research (Velte, 2022) on the Albanian common law, especially the KLD which was bigotry applicable throughout history in Northern Albania and Kosovo as well.

This study fills the gaps (Yeung, 2018) in the data provided regarding the authenticity of ACL, during many periods of time in which this law was applied, especially during the rule of the Bulgarians in the Albanian territories.

The research data of the paper contribute to further research in various scientific fields such as

the legal-criminal, criminological, and history of law. Sociologists, ethnologists, anthropologists, etc., in the fact that ACL, although it is peripherally influenced by the people with whom they coexisted in the neighborhood or by whom it was ruled, it has been proven that it has preserved authentic institutions which differ substantially from the other customary rights of other people.

The structure of this article is as follows. Section 2 reviews the relevant literature. Section 3 presents the methodology used to conduct the study. Section 4 presents the results and discussion of the results and Section 5 presents the conclusions of the study.

## 2. LITERATURE REVIEW

The saying "every people and every place has its own customs and traditions" is well known (Dieter & Wimmer, 1992, p704). Modern European nations have committed to preserving and promoting the customs and traditions of various people (Publications Office of the European Union, 2009). Such care by the European community for customs and traditions is considered to guarantee the protection of freedom and peace in the Old Continent (Hoke & Reiter, 1993, p. 6).

In its origins, customary law is a product of tribal order, which lacked a genuine state organization and institutions to create and enforce the law (Pëllumbi, 2006, p. 3). This type of law was known in the era of ancient states in the Near East (Stewart, 2006), e.g., the Kingdom of Babylon in Mesopotamia. Later, this law was also applied in the early European states, such as ancient Greek city-states (Ismaili & Sejdiu, 2017) and the Roman Empire. "*Mos, mores majorum, diuturna, longa or inveterata coensetudo*" were Roman expressions of the customary rules of connection. Customary law really had a prominent role in Roman law, it was the strongest in the periods of the Roman Kingdom and the Roman Republic. In the Roman Empire, on the other hand, the emperor's central power was progressively strengthening, customary laws were gradually suppressed, and the central legislative power eventually became paramount (Honsell, 2002).

During the feudal period, customary law was also applied by the Frankish state, the Arabs, the Ottoman Empire, medieval France, England, and partially even in modern times. By today's legal terminology, Ancient Athenian customary law represents "an unwritten constitution with which all acts and actions of state organs had to be in accordance" (Ismaili & Sejdiu, 2017, p. 84) Thus, based on this general definition, Athenian customary law was an unwritten set of laws that resembled state law.

Such is the case with Islamic law, whose foundations lie in Arabic customary law, not only from Muhammad's era in the 7th century but also earlier, knowing that Muhammad accepted various customary norms of the region within Islamic law (Salem, 1984, p. 27).

A typical example of a state where traditional customary law developed continuously and adapted to contemporary rules in our times is England (Merryman & Pérez-Perdomo, 2007). The entire English constitution is originally based on old common law, and the individual English constitutional laws are based on the Magna Carta Libertatum by King John

of England (known as John Lackland) on June 19, 1215 (Turner, 2003). Many other declarations and legal acts were built on the foundation of the Magna Carta, thus it is also known as the first basis of English common law (Berman, 1983, p. 308) or the mother of modern liberties, parliamentarianism, and constitutional law, as an act that defines the power of the state (Fleiner & Basta Fleiner, 2004, p. 228).

In countries such as Montenegro, customary law was accepted as a subsidiary source of civil law despite the instatement of the General Property Code of 1888. The author of this code himself, a supporter of the legal-historical school, Valtazar Bogišić, held the belief that customary law should serve as a basic source of every legislative act (Bogišić, 1888).

Over the centuries in the territory of France, the law was not unique but the particular law, respectively regional was applied. In the southern part, the written law was applied which was called "*droit écrit*" which was based on Roman law and was practiced according to this right. While in the central and northern parts, there was a common law based on local customs, but influenced by various other elements. This right was called "*droit coutumier, coutume*" and was based on German-Franco-Norman feudal customary law. Only in the 16th century, "codified coutumes" were applied to wider territories (Pardessus, 1833).

Germans also assert that long ago "customs were the law" (Kern, 1992, p. 12) and that they express the "soul and spirit of the people" (Kern, 1992, p. 26). The application of customary law was also practiced in medieval Russia. Turkish law in the 16th century was also dominated by the Multaqal-abhurin customary law that had mixed religious and secular state norms (Albrecht, 1905, p. 26). This law, known in Latin as *Corpus Iuris Osmanorum*, was applied by Ottoman judges up to the second half of the 19th century.

It must be said that customary law through time must have been influenced by the great migrations in Europe throughout history as well as by the conquests of the people.

ACL is part of the multitude of European customs. The roots of the unwritten Albanian law have been painstakingly preserved since antiquity, before the birth of Christ, and have been passed on from generation to generation to this day (Ukaj, 2006, p. 32). Despite the foreign invasions during the history suffered by the Albanians, since the Albanian territories fell under foreign control, first by the Roman Empire in 168 B.C., (and then by Byzantium, Bulgarians, Slavs, Ottomans, and again by the Slavs) the right customary was applied somewhere less and somewhere more in parallel with the right of the invader (Laurasi, Zaganjori, Elezi, & Nova, 2007, p. 231). This period of foreign conquest lasted until 1912 in Albania and 1999 in Kosovo.

It is important to emphasize that the main sources of ACL are Kanuns. A Kanun is a legal and social complexity that is not in close relation with legal aspects, but as a basic source of ACL, it is distinguished by a conglomerate of rules of constitutional, political, economic, religious, and family characters (Qerimi & Berisha, 2011). All the aforementioned features were regulated by precise norms that were orally transmitted through the generations, from the elders to the youth.

The majority of the rural population led their lives and political, social, and military activities according to the rules and norms dictated by the Albanian Kanun. Therefore, the scholar Ejup Statovci was right when he stated that the KLD ranks even higher than a constitution or any other contemporary law, because its provisions regulated not only the entire social and legal system, but also contained norms, which had nothing to do with law and legal institutions (Statovci, 1990, p. 517). ACL or Jus Albaniense is a conglomerate of legal norms that regulate all social and economic relations among Albanians, from pre-birth to death, in a specific human environment where the formal source of the law lies not with a certain authoritative state organ, but with the customs of a social environment, created gradually and spontaneously from the ancient period.

The unique features of these Albanian customary rules, which constitute ACL, were principles related to the guest and hospitality, blood kinship groups, honor, manhood, truce, guarantee, mediation, and reconciliation as well as blood feuds and vengeance.

During the Communist Regime in Albania, from 1944-1990, Kanun was banned and has not been practiced for around 50 years. After the 90s, with the fall of communism in Albania (Xhaxho, 2018) in addition to positive law, the application of the norms of ACL began, especially with regard to feuds and blood feuds due to the non-efficient functioning of military justice as well as due to unresolved conflicts since the 1950s communist rule in Albania.

When it comes to the customary law in Albania, most people that are not from Albania, have only a little idea of what it means (Bangerl, 2019, p. 2). Since this ancient right has been practiced in a verbal form (non-scripted) passed down from generation to generation of the Albanian population. Albanian canons as basic sources of customary law have been codified for the first time since the beginning of the 20th century in Leke Dukagjini, as well as Skanderbeg and Labëria, until the end of the 20th century.

Also, one of the difficulties of recognition of this customary right not only by foreigners but also by Albanians is the fact that this codification is written in the dialect of Gege (today in the Albanian literary language, the unified language is used since the Congress of the unification of Albanian language that was held in Tirana in 1970), see the KLD, codified by Father Shtjefen Gjeqovi, who used the Gege dialect spoken by the population of that region, that this text is difficult to understand for the new Albanian generations, let alone for foreigners. The translator of the KLD into English, Fox (1989), expressed himself as follows: "If I knew that it was so difficult to find synonyms for the translation of this canon into English, I wouldn't have started" (p. xix).

Different scholars are of different opinions regarding the time when the entity of the Albanian traditional law known as Kanun of Lekë Dukagjini was compiled, precisely the law which reigned supreme in the highlands of Northern Albania. They offer their arguments based on historical data, mainly but also by tapping other sources. In order to resolve such a mystery, we can obtain important

data through the analyses of the language and terminology used by Father Shtjefen Gjecovi, when he gathered and compiled the Albanian verbal tradition of Kanun (Aliu, 2021a, p. 69). Father Shtjefan Gjecovi had begun at the end of the 19th century to present fragments on the existence of the KLD in the Albanian magazine *Ylli i Drites* published in the United States of America, while he did his greatest work in the year in the codification of the KLD published in 1933.

Aliu (2021a) in the other paper, analyzes how the characteristic norms of civil, criminal, and family law combined with the ethical-moral and religious norms of the KLD. The subjective aspect makes them binding and the differentiation with customs is based on today's juridical doctrine. Why did Kanun's norms make up the legal system of the period? The origin of sanctions and how they started to be incorporated into the customary law of Northern Albania. The role of the Catholic Church on the canonical norms and their application by using instruments that were provided by customary law (Aliu, 2021a, p. 131). Likewise, the late professor Ejup Statovci gave the Kanun a higher epithet than the Constitution, since the rules that determined the behavior and actions of a person from birth to death were summarized in the Kanun.

Qerimi (2020) has addressed the aspects that have to do with the special institutes of this canon such as positive and negative elements: hospitality, faith, honor, manhood, honor (security), revenge, and blood feud. From the findings of the author, it results that these cumulative elements are the only specificity of this canon and that this specificity is not found in other codes of other nations.

### 3. METHODOLOGY

The researchers use a specific comparative approach in legal research (Al Qatawneh, Almobaideen, & Qatawneh, 2022) to analyze customary law throughout history, and in particular the KLD as a fundamental source of ACL. The present study uses a qualitative research methodology (Xhafaj, Hoxha, & Beka, 2022). In this paper, using comparative, theoretical methods, meta-analysis, and relying on historical data from various sources of international and national scholars on customary law in different periods of history is achieved to clarify the impact of customary law during different historical periods. The revised literature is of international level from numerous indexed platforms (Ibraimi, 2022) as well as from the use of various world libraries such as that of Vienna (Austria), Bochum (Germany), Tirana (Albania), and Pristina (the Republic of Kosovo).

Following the overview of the empirical literature (Kalantonis, Schoina, & Kallandranis, 2021), we use multidimensional measures for the review of the literature at the international and national levels by eminent experts who have dealt with customary law. Likewise, another basis was the review of the literature of young researchers, especially those young researchers who worked on their dissertations on customary law topics. Moreover, the first author of this work, Islam Qerimi, has drawn up a dissertation related to ACL, in the Faculty of Law at the University of Bochum in Germany. This author has also made a great foreign

contribution with many scientific works and texts published in German, English, Croatian, and Albanian.

The researchers have selected the studies that have left a special mark in their studies on Albanian and foreign customary law. Likewise, the citation of new research papers in recognized journals with impact factors has also been the basis.

The authors in the research have taken into account the alternative discourses of foreign authors who have claimed that ACL, with particular emphasis on the KLD, was received or borrowed from other codes, and the authors of the research have argued the opposite in their work.

## 4. RESULTS AND DISCUSSION

### 4.1. Etymology and canons applied

Etymologically speaking, the term "*kanun*" appears to be related with the Akkadian word "*qanu*", in Hebrew "*qane*" (Sellers & Tomaszewski, 2010, p. 202), which initially meant "to draw a straight line". It was later borrowed into Ancient Greek as "*κανών*" (*kanón*) (Anić, 2003), meaning rule, regulation, and then into Latin as "*canon*", a generally accepted rule, standard, or principle by which something is judged. During the Byzantine era, the term "*kanun*" meant "straight" with the metaphoric meaning of "straight line". Kristo Frashëri believes that the word "*kanun*" is of Byzantine Greek origin. The term "*kanun*" was also extensively used in Arabic *qānūn*, for laws and rules. Later in the Middle Ages, during the Ottoman Empire, the terms "*kanun*" and "*kānūn-nāme*" are found (Elsie, 2003, p. 12), which designate the secular laws decreed by the sultans in accordance with the Islamic Sharia law.

Therefore, based on these terminologies presented by foreign languages, it is believed that the etymology of the Albanian name "*kanun*" is borrowed from one of these languages. It is worth noting that in southern Albania, the term "*venom*" was used alongside "*kanun*" to refer to customary law.

There were three general Albanian Kanuns based on geographic prevalence, as well as a large number of so-called local kanuns and variations of the three main ones. Since nation-states did not exist in the Middle Ages, governance was carried out based on particular territorial conglomerates. The three kanuns that were the fundamental, unique sources of ACL were the Kanun of Lekë Dukagjini (KLD), the Kanun of Skanderbeg (KS)<sup>1</sup>, and the Kanun of Labëria (KL)<sup>2</sup>.

These kanuns were applied in Albania's northern highlands and the northeastern Albanian lands, including Kosovo (KLD), in certain areas of central (KS), and southern (KL) Albania, mostly in Labëria and Himara, between the highland populations of Labëria, Toskëria, and Çamëria. The three kanuns are very similar to each other with few negligible conceptual differences that did not cause disorder to the social coexistence of various Albanian populations.

<sup>1</sup> The Kanun of Skanderbeg was applied in central Albania in the regions of the Principality of the Kastriots and areas of influence: Krufë, Mat, Dibër, Elbasan, from the rivers of Mat and Fand in the north to river Shkumbin in the south, from the Adriatic Sea in the west to the settlements of Dibër and Ohër in the east.

<sup>2</sup> The Kanun of Labëria, also known as the Kanun of Papa Zhuli, was applied in southern Albania, specifically villages in upper and lower Kurvelesh, Himara and Tepelena, Vlora river up to the Ionian Sea near Delvina (except Pogon and Dropull).

This paper will generally focus on the KLD, which has historically been applied more than the other two, and some of its elements have been applied concurrently with modern Albanian and Kosovar law. There were many other regional Kanuns or variations of the three main ones used in Albanian territories that were applied in certain regions<sup>3</sup>. Those researchers worked on ethnocultural peculiarities of Albanians, and little-known practices and wrote earnestly on ACL and its cultural values.

#### 4.2. The Kanun of Lekë Dukagjini (KLD)

Among the Albanian kanuns, the KLD has piqued the most interest, not only among Albanians but also among international researchers. Thus, this paper will focus on the KLD, which is a conglomerate of norms from ACL that was practiced fanatically throughout history, and its remnants are still noticeable today.

Pupovci (1968, p. 38) concludes that Lekë Dukagjini did not issue the Kanun, but it is a work of unwritten customary law; it is an integral part of Albanian traditional law as a whole. It was named in memory of Lekë Dukagjini because he distinguished himself as a leader in the fight against the Turks. The KLD contains such rules that are much older in origin than Lekë Dukagjini himself. The KLD also contains such customs that can be associated with manism, animism, and totemism.

According to Elezi (1983, p. 32), the first longer article written about this Kanun was published in 1871 in the official newspaper of the Kosovo vilayet (an Ottoman administrative unit) called Prizren. Later, Shtjefën Gjeçovi, a Kosovo-born Catholic priest, published fragments of the KLD in the Shkodra-based magazine *Hylli i Dritës* in 1890. Gjeçovi had collected firsthand data from Mirdita highlanders and, throughout 30 years (1898–1929) accurately gathered, codified, and described the KLD. The KLD was published in Shkodra in 1933, four years after he was killed in Prizren by the Serbs.

Gjeçovi's KLD is composed of 12 books and 1263 articles. He was widely praised among Albanians for his ethnological, historical, and national work on the KLD (Elezi, 2003a), even receiving a post-mortum honorary Ph.D. from the University of Leipzig. This Kanun was heavily influenced by ecclesiastic or Canon law, judging the by role and legal protection that its clerics enjoyed (Pëllumbi, 2006, p. 6). The first book of this Kanun defines the special importance and privileges of the church in Albanian society.

The geographic prevalence of the KLD's application was not only within the territory of Mirdita but also in the territories of clans that were left under the administration of Yugoslavia in 1912–1913 (Hasluck, 1954, p. 23). Specifically, this Kanun was applied in the territories of Malesia e

Madhe<sup>4</sup>, Shkodra, Dukagjin, Puka, Mirdita, and the Gjakova Highlands.

Gjergj Fishta, a prominent Albanian priest and literary figure wrote: "By collecting the Kanun of Lekë Dukagjini, Father Shtjefën Gjeçovi did a great service to our nation, because every country desires to live and develop according to principles of reason and true civilization, but also have the right to know the norms of customary law, which have their own importance, the best of which need to be taken into consideration in order to be applied alongside state laws" (Fishta, 2001, p. 23).

In the KLD, the Gjonmarkaj family of Mirdita is considered as the basis of the Kanun (see para. 1035 and para. 1126 of the KLD). In northern Albania, the belief that the Gjonmarkaj are the descendants of the Dukagjini was widespread, thus they inherited the function of the arbiter until the beginning of the 20th century.

Regarding the etymology of the KLD, as well as its history, there are different beliefs expressed by many authors. The following part will discuss the main postulations of these authors regarding the name and time of emergence of the KLD.

#### 4.3. Views on the history of the KLD

##### 4.3.1. The Kanun as a pre-Christian customary law (before Lekë Dukagjini)

The well-known researcher of the KLD Edith Durham dubbed this Kanun as the oldest European code transmitted through generations since the Bronze Age (the last centuries of the third millennium until 1200 B.C.) (Durham, 1991, p. 28). Regarding ACL and Albanians, Holland (1815) said: "It comes from a distant time with little changes, maybe regarding its condition, practices and customs, than any other community in Europe" (p. 101). ACL researcher von Thallöczy (1916, p. 410) held the belief that, based on the content, the origin of this Kanun has to be much older than the Catholicism of Lekë Dukagjini. Albanian writer and statesman Konica (1930) said that the KLD "has its roots before the Middle Ages" (p. 156). Japanese anthropologist Yamamoto (2008) considered the KLD to be similar to ancient Japanese customary law and Homeric-era law. Austrian author Peinsipp (2005, p. 21) believed that the basic norms of the KLD are old and share similarities with the Roman Law of the Twelve Tables.

The KLD stipulates a few institutions similar to Ancient Athenian popular democracy. Specifically, punishments regarding loss of honor (Greek *atimia*) and expulsion (KLD — expulsion from the region) were also known in Ancient Athens (Ismajli & Sejdiu, 2017, pp. 93–94). Regarding the loss of honor, the KLD says: "A man who has been dishonored is considered dead according to the Kanun". Furthermore, Ancient Athenian ostracism (Greek *ostrakismos*), which was applied in some cases, was also stipulated in Articles 1194–1196 of the KLD. So, both of the aforementioned laws similarly stipulated the expulsion of serious offenders. They were expelled for a certain period, as they were considered a threat to the area and society.

<sup>3</sup> Other Kanuns with narrow territorial prevalence were the Kanun of Greater Malesia, the Kanun of Benda, the Kanun of Dibra, the Kanun of the Gjakova Highlands, the Kanun of tarmanesh, the Kanun of Luma, the Kanun of Idriz Suli, the Kanun of Lekë Dukagjini (the Shkodra variant), the Kanun of Lekë Dukagjini (the Mirdita variant), the Kanun of Lekë Dukagjini (the Puka variant), the Kanun of Martanesh, the Kanun of Benda (variant of the KS), the Law of Dibra, the Kanun of Lura, the Kanun of Must Ballgjini (the Kanun of Çermenika), the Kanun of Kurbin, the Kanun of Puka, the Kanun of the Lezha Highlands, the Kanun of Shpati, the Kanun of Papa Zhuli, the Kanun of Çamëria, the Rules of Idriz Suli, the Laws of Himara, the Kanun of Toskëria, and the Kanun of Hasi.

<sup>4</sup> Noteworthy is that the Kanun of Greater Malësia was applied in Greater Malësia, which was similar to KLD, and was applied by the clans of Hoti, Gruda, Kelmendi, Kuçi, Krasniqi, Bytyçi, Gashi, which are located north of Shkodra, as well as in the eastern mountains of Gjakova in Kosovo, and north of Dukagjini.

#### 4.3.2. The Kanun as a customary law codified by Prince Lekë III of Dukagjini

A number of authors share the belief that this Kanun was named after and codified by Prince Lekë III of Dukagjini (1410–1481) who ruled over a few northern Albanian territories in the 15th century (Šufflay, 2004, p. 90). Proponents of this thesis refer to a few norms that are said to have been left by Lekë himself. Namely, in the KLD codified by Gjeçovi (2014), it is said: “Blood feuds were left by Lekë, one for one, because the bad comes from the good, as does the good from the bad. A soul for a soul, as appearance is God’s business. The cost of a man’s life is one, both for the good and for the bad” (p. 85). The rest of the authors who attribute the KLD justify its name through the territory where it was applied, which includes Shala and Shosh, Puka and Ikballe, Mirdita, Zhupa, and the Lezha Highlands, all of which were under the rule of the Dukagjini (Fishta, 2001, p. 85).

According to Pupovci (1968), the KLD contains customs of manism, animism, and totemism (p. 38). Thus, our stance paper is the same as von Thallöczy’s (1916, p. 410), who concluded that the KLD belongs to the pagan era rather than Lekë Dukagjini’s time. Even the principle of blood for blood as a form of the law of talion, which has been applied since antiquity, and “equality of men through blood”, must have been inherited from a pre-state tribal system.

#### 4.4. The timeline of application of the KLD alongside state law

##### 4.4.1. Antiquity

This unwritten law (*jus non scriptum*) belonging to the Albanians dates back to antiquity (Pupovci, 1971 p. 75). Specifically, it has been applied as one of the traditions of the ancient Illyrians (Cani, 2000) in the Balkan Peninsula of Southeastern Europe, who are known as the precursors of modern Albanians (Thunman, 1774, p. 249). Illyrians have been present in the Balkans since the Middle Paleolithic (Laurasi et al., 2007, p. 70). In the primitive communities of the Illyrians, society regulated societal relations through customs. Illyrian customary law turned into feudal customary law with the advent of the state (Elezi, 2010, p. 76), with customary law turning into norms sanctioned by the state. The organs that implemented these judicial customary norms were called Plakonia, which is likely related to modern Albanian *pleqësi*, meaning “elderly” (Frashëri, 2007). Elders (or *leges patrum*) were judicial organs that could be compared with modern judges. This, it can be rightfully said that the judicial institutions of the Illyrians were preserved throughout history and transmitted to Albanian Kanuns (Meksi, 1969, p. 197).

After the fall of Illyria to Rome in 168 B.C., it (Illyria) was turned into the province of Illyricum where Roman law was applied, yet communities that resided in mountainous regions were allowed to self-govern based on traditional law (Meksi, 1969, p. 196). Among many other clans that were allowed by Rome to have internal self-governance were the Albanoi. It is important to mention that, although Latin started being spoken in the mountains of Illyria, it never managed to replace the native language (*lingua albanesca*) (Tase, 2010:139)

##### 4.4.2. Early Middle Ages (4th–10th centuries)

Important elements of ACL were found in medieval Albanian documents from between 343–1046 (Elezi, 1983, p. 19). During the period of re-division of the Roman Empire in 395, Albanian territories fell under the eastern part (*Praefectura praetoris Illyricum*) of the Eastern Roman Empire (ERE). The Agrotikos Nomos or Agrarian law between the 8th and 14th centuries was one of the fundamental laws on which the ERE was based for a long time. Religious judicial laws called *nomokanon* were also applied during that time (Pëllumbi, 2006, p. 7).

Considering these the ERE laws regulated all administrative, financial, fiscal, penal, religious, and other activities, it allows for the belief that there could have been an interweaving with customary law in Illyrian areas, which entails influence by local judicial customary traditions as well as the possibility of leaving its marks on the KLD. It is important to mention the fact that in that period, ACL was applied concurrently with the ERE law in general (Elezi, 2010, p. 22). However, data shows that the ERE law was occasionally not accepted, and even openly rejected at times (Elezi & Hysi, 2006, pp. 52–53). It is considered that the Eastern Roman Empire law, with a number of harsh laws, has influenced ACL (Pëllumbi, 2006, p. 6).

Between 547 and 548, Slavic tribes conquered the territory of modern Kosovo (ancient Dardania) and penetrated all the way to modern Durrës, Albania, and in the middle of the 6th century, they spread across central Albania. According to historians, Albanians preserved language, customs, and culture during this period (Gashi, 2016).

After 809, Bulgarian set foot in Dardania and expanded within Illyria, all the way to the Adriatic Sea in the west. In 850, Bulgarians had full control of Kosovo, which remained under Bulgarian rule until 1014–1018 when Tsar Samuel of Bulgaria died and his empire started disintegrating. In Albania, Bulgarian rule lasted from 861 to 1018. Historical sources show that Samuel did not aim to overthrow the administrative and military structures of the Albanian territories he conquered. During this period, the most well-known law was called *nomokanon*, which was inherited from the ERE. From the creation of the Bulgarian state in 681 until the Ottoman conquest in 1396, Bulgarians applied customary law as the main source of legislation (Maesch, 2010, p. 10). It is important to note that Bulgarian customary law is considered to originate in the pre-Christian period, similar to the ACL (Andreev & Milkova, 1993, p. 170).

##### 4.4.3. Late Middle Ages (11th–14th centuries)

In Albanian territories between 1043 and 1081, the name *arbanoi* (modern Albanian *arbër*) appeared for the people descended from Illyrians. In the cities, “Venetian” law was applied (especially in city statutes), whereas, in the mountains where it was not applied, state law was substituted with institutions of traditional law such as revenge and private blood feuds (Valentini, 1944, p. 28).

After the Bulgarians left Albanian territories, the ERE administration was reinstated. In the middle of the 12th century, ERE Manuel I Komnenos allowed Albanian cities the privilege of self-administration according to their own Kanuns (Elezi, 2010, p. 78).

Yet, the ERE rebound did not last long in Albanian territories due to the incoming Serbian invasion. The conquering of Kosovo started first in 1184–1185 and was concluded in 1216. During the two-century-long Serbian rule in Kosovo (1216–1416), the state culturally and religiously assimilated the local Albanian population through forced conversion into Serbian Orthodoxy (Murzaku, 2015, p. 249). During this period, the Dušan's Code (in Serbian — Dušanov zakonik) is mentioned (Novaković, 1898), which was enacted by Tsar Stefan Dušan (1331–1355), in 1349 in Skopje. The Serbian Zakonik was not only to be applied in the Kingdom of Serbia but also in the conquered territories of Macedonia, Thessalia, Epirus, and Albania.

During this period of the code's application in Albanian territories, there were many discrepancies with ACL. Dušan prohibited local customary institutions, especially in northern Albania, such as the assembly of village councils, where many issues were settled because it became a competence of certain fellows of the Serbian tsar.

As opposed to the KLD, Dušan's Code stipulated peculiar punishments that are not known in ACL. For instance, punishments included harsh bodily injuries, severing of ears, noses, amputation of hands, gouging of eyes, etc. (Novaković, 1898). Despite that, considering the principle of influence between different laws, there are historical facts that point to the execution of such punishments in Albanian territories too as a result of revolts against the state. For example, Gjergj Balsha II (in Serbian — Đurađ Balšić II)<sup>5</sup> of the Principality of Shkodër punished the head of an uprising against the state by cutting his hand, nose, and tongue (Elezi, 2010, p. 79).

An evident difference between this code and the KLD lies with ecclesiastical punishments. In Dušan's Code, the punishment for those who refused to convert was death, branding on the forehead with heated metal, confiscation of wealth, expulsion, and physical punishments (Jacques, 2000, p. 191).

Montenegrin society also issued specific ecclesiastical punishments that were not known in the KLD, for instance banning from a church building (Jelić, 1926, p. 79). Article 82 of the Serbian code contained a provision that was absent in ACL in general: if an Albanian went through a Serbian village, he needed to be alone. If somebody joined him, the person would be fined. In the KLD, an Albanian was not only obligated to greet a stranger, but also ask whether they needed anything, and be prepared to help them. If a foreigner was murdered without fault in an Albanian region, the region would take responsibility. In that case, the clan of the victim would have the right to blood feud anywhere in the region (Elezi, 1983, p. 99).

Nopsca (1920) shared the belief that the KLD was an authentic law applied between the 12th and 15th centuries (pp. 5–6). This hypothesis is reinforced by the data of Byzantine historian John Kantakouzenos, known also for warring in Albanian territories, who points out that "Albanians lived in

an autonomy and did not recognize the power of the emperor" (Tase, 2010, p. 91).

It is worth noting that, while kanuns were rather applied in rural regions of Albania, city statutes were in force in cities such as Shkodër, Durrës, Drisht, Danjë, and Ulqin, at least between the 13th and 15th centuries. These statutes were drafted based on the models of Western city-states such as Venice, Milan, Ancona, Florence, Trieste, as well as Ragusa (modern Dubrovnik) (Elezi, 2003b, pp. 32–34).

#### 4.4.4. Ottoman period (15th–20th centuries)

From the 15th century — Kosovo fell under Ottoman rule in 1455, whereas Albania was invaded in 1388, defeated in 1430, liberated in 1443, and reconquered in 1479 — until the first half of the 20th century, Ottoman law was applied in Albanian territories (Tutulani-Semini, 2006, p. 12). The sources of this law were Islamic law (Sharia) and a law called Kanunname (Inalcik, 2021). Sharia law was applied among Muslims, whereas Ottoman law was applied among people with different religions. The Kanunname consisted of individual legal acts by the Sultan that regulated specific situations regarding a subject or a community. This Ottoman law was applied in Albanian territories for around five centuries. In Albanian territories specifically, the Kanunname of Sanjacs and Vilayets were applied — Shkodra, Vlora, Ohrid, Prizren, Vushtrri, Korça, Gjirokastra, etc. However, the KLD was the only one among other Balkan states that functioned as a parallel law, and in some places (such as Mirdita, Malësia e Madhe, and Dukagjini) dominated over these Kanunname and other Ottoman laws starting in 1479, over Sharia law and other secular laws (Ulqini, 1991, p. 16).

According to Hasluck (1954), Lekë Dukagjini tendered his resignation to the Turks only after they agreed to allow the application of the Kanun and respect decisions made by it. When under the Ottoman Empire, Albanians created a proverb in Malësia that goes "*më mirë dami me godi sesa me kadi*" (issues are better solved through an agreement than through a kadi, an Ottoman judge) (Ulqini, 1989, p. 78). This proverb is a testament to the public distrust of foreign law, be it secular or religious, in relation to the KLD. Thus, an important characteristic of the KLD is that it always retained a secular spirit, while also respecting religious tolerance and historically adapting to the circumstances of a place with a religiously mixed population, which existed since before the Ottoman conquest (Ulqini, 1989, p. 79). This fact is also supported by the lack of faith-related punishments in the KLD.

Regarding the existence of the KLD and its differences compared to other Kanuns, there is information from as early as the 17th century about the origin and method of arbitration on issues of blood feuds in Albania, especially in Venetian-held areas from the Bay of Kotor to Shkodër (Valentini, 1944, p. 28). It was also documented later in the 19th century by Austrian albanologist Johann Georg Hahn (1811–1869) (Elezi, 2010, p. 31).

In the 19th century, Ottoman elites instated a set of reforms intending to create a modern, European state. To that end, they took measures to stop all local institutions and, among others, limit

<sup>5</sup> After meeting Gjergj I Balshaj in 1369 in Ulqin, Hungarian emperor Sigismundi gave him the title "Prince of Albania". Although they themselves converted to Catholicism, the Balshaj were tolerant towards their Orthodox citizens. They led assemblies of Orthodox believers. Gjergj I Balshaj is portrayed as a person with "his Albanian customs".

ACL to eliminate it completely in the long term. Yet, to the downfall of the empire and the Albanian declaration of independence in 1912, the Ottoman did not reach this objective (Reinkowski, 2005).

At the beginning of the 20th century, Albanian fellowships or truces (*besëlidhje*) were established to solve blood feuds and through it fight the Ottoman Empire. One of the most important truces was the one of Tirana in 1908, which delivered capital punishment to traitors. Another important one was the Truce of Kurvelesh in the same year (Elezi, 1983, p. 85).

According to Hasluck (1954), who studied ACL, the legal system based on the ACL functioned well during this time, and was "oftentimes faster and less expensive than comparable European systems, because it seldom left an issue unresolved" (p. 22).

#### *4.4.5. Albanian independence until the end of World War II (1912–1945)*

Albania, with its current borders, was declared independent on November 28, 1912. That period saw a tremendous emergence of revenge killings and blood feuds in Albania (Gaçe, 2004, p. 59). In 1913, representatives of Kruja highlanders gathered in support of the provisional government in Vlorë. They agreed that blood feud murders would be abandoned, and whoever opposed or broke this resolution would answer to this government and would be considered as a dishonored person by the people of the country (Elezi, 1983, pp. 185–186).

The provisional government in Vlorë allowed the application of customary law until new laws were put in place to fill the vacuum left by the fall of the Ottoman Empire in Albania (Elezi, 1983, pp. 26–27).

However, in the Lushnjë Congress of 1920, known as an important event that reasserted Albanian independence after World War I, the Government of Lushnjë approved the basic constitutional act, removing the legal power of the Kanun. Afterward, laws approved during the reign of King Zog I (1926–1938), the legitimacy of the Kanun was stripped, and it ceased being used as a basic law of Albanian society, with a few exceptions regarding inheritance law, which were unresolved. In the broader dispositions of the Statute of the Congress of Lushnjë approved in December 1922, it was stipulated that nobody could be called or judged in a court other than the ones sanctioned by law and that every verdict needed to be based on the law. In this congress, a pledge was made to battle enemies and stop all blood feuds (Stevens, 2004, p. 25).

It is noteworthy that in southern Albania there were some efforts to reform ancient customary law. In December 1924, the Customary Congress of Labëria was held, which aimed to reform customary law, especially to end hostilities and emancipate women, and elevate their position in the family and society (Elezi, 1983, pp. 57–58). With the ascent to power of Ahmet Zogu (later King Zog) on December 24, 1924, Kanuns were replaced through force. This was first achieved with the adoption of the 1925 Constitution and the approval of penal and civil codes in 1928 and 1929. These Albanian codes were created based on Western tradition. In 1928, the Albanian Penal Code was put in place, based on the model of federal Swiss law. The new code

harshly punished wilful murders (see also blood feuds) according to Article 405, para. 2. In these cases, the guilty were punished by death. Worth mentioning is that even after the approval of the Albanian Civil Code in June 1929, inheritance issues that were in progress before the code came into power would continue to be resolved based on customary law (Biçoku, 1997, p. 17). Albanian kanuns were applied in Albanian highlands and some parts of the lowlands until the end of World War II.

#### *4.4.6. Post-World War II (1945) until the democratization of Albania (1991) and independence of Kosovo (2008)*

After World War II, the Kanun was rejected by the dictatorship of Enver Hoxha, being considered a risk to the state. Yet, until the complete installation of the communist system in 1947, the Kanun rather than state law was applied to resolve property disputes. Despite that, the sentiments towards the Kanun were not eliminated entirely during the regime and survived until the fall of communism in 1991.

Since the end of World War II in Kosovo, Elder Councils have been known as parallel courts in all penal, civil and judicial issues (Qerimi, 2016, p. 100). It is especially noticeable in the review of various property disputes and those caused by marriage. After the establishment of the Kosovo Constitution in 1974, which charged state courts with judicial power, the scope of the Elder Councils continued waning (Sahiti, 2006, p. 63). During the period of Kosovo's occupation by Serbia, between 1989 and 1999, Albanian staff were removed from the judiciary. As a result, Albanians were able to unify under the patronage of the Student Youth of Kosovo led by university professor Anton Çetta and massively solve blood feuds around the country.

## **5. CONCLUSION**

Ultimately, only such a thing has been done to find scientific knowledge on their customary application to Albanians. So according to the approximate data, it is concluded that this is right its roots since time immemorial. It was in the mind and was fanatically passed down from generation to generation. Since the territories where Albanians lived since 168 B.C., when they fell under the rule of the Roman Empire, and later from the Middle Ages also from the Eastern Roman Empire, Bulgaria, Tsar Dusan's Serbia, the Ottoman Empire, again Serbia, and finally from communist Yugoslavia and after World War II, the laws of these rulers were brought. Nevertheless, the Albanian people, in addition to these laws of the rulers, always apply in parallel the norms of the autochthonous customary law. ACL consisted of a number of regional canons, but the most important were the Kanun of Lekë Dukagjini, the Kanun of Skanderbeg, and the Kanun of Labëria. ACL has been studied mostly by local and foreign scholars. This canon was also in this paper as a central object of study. From the collected and analyzed data, it has been concluded that this canon has included in itself the norms of social regulation of Albanians from the moment of birth until death. Therefore, it was rightly called a constitution and more than one constitution. In this paper, it was



proved that different people have created customary norms and later they have codified them in laws and codes. Whereas, the Albanian people had never codified it in legal texts. For the first time parts of this customary law were found written in the late nineteenth and early twentieth centuries. It should be emphasized that these customary norms are generally authentic, which were inherited from their ancestors, since the Illyrians, but we should not reject the combination of these norms with those of neighbors or even foreign rulers. Not only Albanian and foreign scholars coming from Western Europe, but also Serbs themselves, have affirmed the authenticity and antiquity of ACL. The application of ACL began to fade with the issuance of laws by local institutions, which were realized with the establishment of the Albanian state (1912) and the entry of NATO troops into Kosovo, in 1999. However, this right was not extinguished. to this day, but it applies to Albanians not infrequently where state jurisprudence fails.

This paper is important for future research because from this paper other authors will have authentic sources regarding the origin of ACL from ancient times to the present and the influence of customary rights of neighboring people and the most distant people. It is also of particular importance because young researchers who have not had access to documents and archives of world changes in different languages such as law, criminology, history, sociology, anthropology, and ethnology will find data that so far have not been available to make more in-depth comparisons of this topic. We hope that in the future this work will be a beginning in the literature that has to do with the origin of customary law.

It also helps to identify research gaps and the potential effects of research problems in a given

scientific domain. This approach can help expand information and map essential connections between authors, institutions, publications, and themes. (Nobanee et al., 2022).

However, this study has its weaknesses as it first took into account only the data from the history of different authors, and no interviews were conducted with customary law scholars in the region. The paper also argues that statistics on the impact of customary law on positive national law are not included.

The second limitation is the focus of the study. No exploration has been done to understand the instigators (Alijoyo & Sirait, 2022) why in some countries within the territories where Albanians live ACL has fanatically survived, and, in some countries, this right has not been applied but the rule of the ruler has been applied. Due to the purpose of the research that the authors have set at the beginning of the paper, the paper is more focused on the originality of ACL and its influence throughout history.

Finally, the third limitation is the analysis period. Although this study explores customary law throughout history, and in particular the Kanun of Lekë Dukagjini as a basic source of ACL, a thorough comparative analysis has not been performed because the Kanun of Lekë Dukagjini have the central point of our research because it has had an intense impact in the lives of Albanian citizens during different historical periods. In addition to this basic canon, at least two other canons have been applied (the Kanun of Skanderbeg or Arberia and Labëria in the southern part of Albania) important in the Albanian territories which have been analyzed only in relation to ACL and the comparative ones that have to do with the origin of ACL.

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